

1 point to the point where he got off the stand, that's the
2 confidential portion of Mr. Reardon's testimony. From the time
3 that Mr. Havens left the room during Mr. Trammell's testimony until
4 the end, that's the confidential portion of that transcript.

5 So it's very simple. There isn't going to be any back
6 and forth where people are going to be submitting to me a further
7 redacted copy of the transcript claiming that things are
8 confidential, that Mr. Havens has sat here and already heard.

9 So I don't know why the Bureau is trying to make this
10 into a complicated process. It's not and I'm perfectly comfortable
11 with the procedure that Your Honor outlined, which is very simple.

12 MR. ENGEL: Your Honor, may I be heard?

13 JUDGE SIPPEL: I could have said what you said in ten
14 words.

15 MR. STENGER: Well, that's why you're --

16 MR. ENGEL: We'll follow Your Honor's instruction.
17 We'll do the best we can. The one complication is Mr. Havens was,
18 in fact, not here at the beginning of yesterday morning and we
19 didn't even see him in the courtroom until after lunch. So there
20 was a break. I think the break was probably noted clearly by the
21 reporter, Sir, but we'll do the best we can.

22 If we reach an impasse, we'll have to raise that with
23 you. But it should be marked in the record. I think the reporter
24 has got it. We'll do the best that we can.

25 JUDGE SIPPEL: Well, check and see. I know what you're

1 talking about and I think I did make some comment on the record
2 when he was not here. I don't know what I made when he came in.
3 But that's fine. I mean I'm just hearing a lot of --

4 MR. STENGER: While we're on the topic of Mister --

5 JUDGE SIPPEL: Well, wait a minute.

6 MR. STENGER: I'm sorry.

7 JUDGE SIPPEL: Oh, dear. You have anything more to say
8 about this, Mr. Keller?

9 MR. KELLER: No, Your Honor.

10 JUDGE SIPPEL: Mr. Kirk?

11 MR. KIRK: No, Your Honor.

12 JUDGE SIPPEL: Everybody go home and get this job done.

13 And don't bother me with emails, please, motions only on -- with
14 respect to this. Well, I shouldn't say it that way. Be very
15 sparing. You should be able to figure this out and put it
16 together.

17 Let me just tell you this as a little story, if you
18 will. In the Tennis Channel v. Comcast case where they had -- I
19 mean they just had so much horsepower to carry out these tasks,
20 they did find some stuff that was in the transcript that hadn't
21 been specifically identified. And they ironed it out. They ironed
22 it out among counsel.

23 You see that? There you go. I said something in my
24 memo on rules of the road that you weren't supposed to have your
25 cell phones on. And there you go. Poor Mr. Stenger. I'm

1 finished. Does anybody else have any specific questions on what
2 you have to do?

3 MR. STENGER: Someone before Mr. Trammell testified
4 yesterday, somebody gave me a copy of his confidential testimony.
5 I don't know who gave it to me. Was it you, Mr. Keller?

6 MR. ENGEL: I'm sure it was me.

7 MR. STENGER: It was you?

8 MR. ENGEL: Yes.

9 MR. STENGER: I thought Mr. Keller gave it to me. I'd
10 like the record to reflect I'm giving back this confidential
11 document. And I don't have a non-public version of anything, at
12 this point, notwithstanding the fact that I signed the protective
13 order. So, if the Bureau would like to serve me with a set of --

14 JUDGE SIPPEL: You know what you do? Why don't you
15 send them a letter? Send them a nice, polite letter asking for it.
16 The only reason you don't have it is that you didn't the order the
17 first time I asked you.

18 MR. STENGER: Yes, Your Honor. I will do that.

19 JUDGE SIPPEL: Thank you. And I'd like to get a copy
20 of that letter.

21 MR. STENGER: I will copy you with it.

22 JUDGE SIPPEL: Okay?

23 MS. KANE: Your Honor, just real quick, I don't want to
24 belabor anything. I just want to clarify that you would like an
25 initial set of confidential proposed findings 30 days from the day

1 on which we receive the final transcript?

2 JUDGE SIPPEL: Correct.

3 MS. KANE: Thank you, Your Honor.

4 JUDGE SIPPEL: And, of course, excluding Saturdays and
5 Sundays. You go over to the next Monday, if that's the case.

6 MR. ENGEL: Your Honor, if I could dovetail that, is it
7 your intention to issue a written order covering the -- I believe
8 you issued three rulings. Pardon me if I have the number wrong,
9 but three rulings after the close of the hearing. Will there be an
10 order memorializing that, Your Honor?

11 JUDGE SIPPEL: Roger that. It's going to be very brief
12 though. So that's it. We're now in recess. This hearing is
13 concluded with the exception of the post-hearing briefing. And
14 what is the program, if I can ask this generally, in terms of
15 discovery and preparing on discovery for the next phase, which is
16 the character phase?

17 MS. KANE: Your Honor, I believe we've proposed a
18 schedule.

19 JUDGE SIPPEL: Yes, you did.

20 MS. KANE: To be honest, I don't remember at all, as I
21 sit here, a specific date. But I believe it was that we start
22 discovery on March 1st, which would have given us an opportunity to
23 do the proposed findings and account for the interim holidays and
24 any delay that there might be on receiving the transcript.

25 I don't believe that there was a specific proposal for

1 a specific date from EVH that countered that. And, instead, there
2 was a briefing on matters that were not specific to the schedule,
3 which we moved to strike. If you recall, there was no opposition
4 to our motion to strike and I believe you granted our motion to
5 strike.

6 So I believe, right now, the only proposed schedule for
7 discovery is the one that Maritime and the Bureau jointly proposed
8 to you, which was to being the second phase as of March 1st.

9 JUDGE SIPPEL: Did I issue an order on that?

10 MR. STENGER: Yes, Your Honor. My recollection is the
11 Order adopted the Bureau's schedule. And it didn't begin in March.
12 I think it began in -- there was something that was supposed to
13 begin earlier than that, admissions or something. Something was to
14 begin in January or February. I don't have it in front of me.

15 MS. KANE: I don't know that there's an actual order,
16 Your Honor.

17 MR. STENGER: We can, obviously, go back and look at
18 that.

19 JUDGE SIPPEL: We agree, and when I say we I mean those
20 sitting up here at the bench, we agree that we can't recall an
21 order. But we'll go back and look further. And, if that's the
22 case and appropriate, I might amend that short order that I was
23 going to issue with the dates for the discovery --

24 MR. STENGER: My recollection is --

25 JUDGE SIPPEL: -- as they have been proposed. Maybe

1 there is one. I don't really remember.

2 MR. STENGER: My recollection is that the Bureau
3 initially proposed a schedule that didn't begin in March but then,
4 when they amended their proposal, they had some aspects of
5 discovery beginning in January or February. But I don't have
6 discovery.

7 MS. KANE: I believe what we asked --

8 MR. STENGER: I believe that you approved that
9 schedule, which begins sooner than March. But I could be wrong.
10 I'm just trying to be helpful.

11 JUDGE SIPPEL: Well, that gives us a start.

12 MS. KANE: I believe what we requested, Your Honor, was
13 the opportunity to submit proposed requests for admission because
14 we were not allowed, in the initial phases, to obtain responses
15 from Maritime as to the non-Issue G Request for Admissions we had
16 originally submitted, in accordance with the rules and the timing
17 for when we were supposed to put requests for admissions.

18 So I believe what we had asked for was leave to serve
19 a second set of requests for admissions in the hopes that perhaps
20 we could limit some of the issues going forward for discovery. I
21 don't remember the specific date but we might have suggested that
22 that start earlier than March.

23 In light of Your Honor's Order and the timing of the
24 transcript, I think we may need to go back and look at that
25 calendar and see if there will be ample time in the schedule to

1 accomplish both of those tasks by the date we had initially
2 proposed, if Your Honor is willing to accept additional requests
3 for admissions.

4 JUDGE SIPPEL: No. We will. And I will work with you
5 on that. I want to work with you on that because I don't want you
6 unduly rushed on the proposed findings. That's a very important
7 part of this case, to me certainly and it should be to you. And
8 there are intermittent holidays coming up. So I do not want to
9 disturb anybody's, you know, fireside fire and all that kind of
10 stuff or maybe even gatherings. Mr. Havens?

11 MR. HAVENS: I'm not clear. Because you have often
12 said Mr. Stenger's my attorney, we're joined at the hip, we're a
13 couple, are you going to continue allowing me to participate to the
14 end of the Issue G as a party, pro se?

15 JUDGE SIPPEL: Well, I'm not going to change anything
16 yet, that's as the case has been carried on thus far. I mean, I
17 don't care what you think about yourself or what you think about
18 Mr. Stenger. I form my own judgment, my own opinion, my own
19 conclusion as to who you are. So, whatever you do, it doesn't
20 bother me.

21 MR. HAVENS: Will I be --

22 JUDGE SIPPEL: Unless, like you did before, you start
23 impacting the case.

24 MR. STENGER: No, Your Honor. I think there's a more
25 specific question here.

1 JUDGE SIPPEL: No, he didn't ask a more specific
2 question.

3 MR. STENGER: Well, but --

4 JUDGE SIPPEL: You want to give a more specific
5 question, Mr. Havens?

6 MR. STENGER: The --

7 JUDGE SIPPEL: Is that what you want to do?

8 MR. STENGER: Let me ask the question.

9 JUDGE SIPPEL: Are you going to let him interrupt you
10 like that?

11 MR. STENGER: Yes, he's going to let me interrupt
12 because it's a very specific question. I don't want to waste your
13 time. In an earlier order, you said that we were supposed to make
14 joint filings in the case, which we've done. That's why we file
15 things as EVH, okay? We've made joint filings, joint motions. You
16 didn't want to have duplicative motions. And so --

17 JUDGE SIPPEL: Nobody did. Nobody did. It wasn't just
18 me.

19 MR. STENGER: Exactly. I, on behalf of Environmental
20 and Verde, and Mr. Havens has joined in those motions. Now, with
21 these proposed findings, that creates a little bit of a different
22 wrinkle because, with me signing the protective order, I can't
23 really file joint proposed findings and conclusions with Mr. Havens
24 if I'm privy to some information and he's not.

25 So I think what he is asking, as it pertains to these

1 joint filings is that we don't want to disobey Your Honor's earlier
2 Order that we make joint filings. But it sounds to me like, for
3 this purpose, we may have to make separate filings.

4 JUDGE SIPPEL: Well, you made this monster. You figure
5 it out.

6 (Simultaneous speaking)

7 JUDGE SIPPEL: This case is closed and the record is
8 closed. Thank you very much, everybody.

9 MR. KELLER: Thank you, Your Honor.

10 (Whereupon, the above-entitled matter went off the
11 record at 11:37 a.m.)
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